IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3857 OF 1990

Smt.Durgabai w/o Dattajirao Ghatge,
Since deceased by the following heirs:-

1.Abasaheb Dattajirao Ghatge,
since deceased by his sons:

1A) Vikram Abasaheb Ghatge,
aged 47 yrs., occ.Service.

1B) Jayant Abasaheb Ghatge,
Aged 40 yrs. Occ.Service.

2.Nanasaheb Dattajirao Ghatge,
aged 70 yrs. agril.

3.Vijaysingh Dattajirao Ghatge,
aged 58 yrs, agril.

4.Ajitsingh Dattajirao Ghatge,
aged 48 yrs, agril.

5.Vimalabai Dattajirao Ghatge,
aged 65 yrs. household.

6.Sou.Lilabai Annasaheb Malik,
aged 60 yrs., household.

7.Smt.Vijaymala Ramrao Halgekar,
aged 55 yrs. household.

8.Sau.Nirmala Jayawantrao Patil,
aged 52 yrs. household.

Nos.1A, 1B & 2 to 8 residing at
Ranmala, Taluka Kagal,
District Kolhapur. ...Petitioners

Versus

1.Yesaba Santu Kamble,
since deceased by his heirs and
legal representatives :

(a) Bhau Yesaba Kambale,
since deceased through his
heirs and legal representatives:

(i) Smt.Muradevi w/o Bhau Kambale

(ii) Shri Shashikant Bhau Kambale

(iii) Kum.Pralhad Bhau Kamble

(iv) Kum.Kamlakar Bhau Kamble

(v) Kum.Fulaji Bhau Kamble

(vi) Kum.Lalita Bhau Kamble

Nos.(iii), (iv), (v) & (vi)
minors by their guardian mother
Muradevi.

2.Devu Yesaba Kambale,
since deceased by his
heirs and legal representatives:

(i) Smt.Aubai Devu Kamble

(ii) Mohan Devu Kambale

3.Bhima Yesaba Kamble,
since deceased by his
heirs and legal representatives:

(i) Smt.Indubai Bhima Kambale

(ii) Keraba Bhima Kamble

(iii) Anil Bhima Kambale

(iv) Shobha Bhima Kambale

Minors by guardian Mother
Smt.Indubai Bhima Kambale

All residing at Village Pimpalgaon
Khurd, Taluka Kagal, District

Kolhapur. ...Respondents

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Mr.P.L.Naik for Petitioners.

Mr.N.J.Patil for Respondents 1(a)(i) to (iii), 1(a)(v) & (vi), & 2(i) & (ii) and 3(i) to 3(iv).

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CORAM: A.M.KHANWILKAR, J.

JULY 23, 2004.

ORAL JUDGMENT :

1. The principal question that needs to be addressed in the present Petition is: what was the holding of the Petitioner landlady on the date when she made application for possession under Section 33B read with Section 29 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') on 27th January 1965. It is not in dispute that exemption certificate under Section 88C of the Act has been issued in favour of the Petitioner on 30th October 1964. On the basis of that Certificate, the Petitioner filed application for possession of the suit land from the Respondents tenants on 27th January 1965. The First Authority, after several remands, have

eventually found, as of fact, that the Petitioner landlady was not in possession of any agricultural land on the date of application i.e. 27th January 1965. For reaching at this conclusion, the Authority has analysed the evidence on record, both documentary as well as oral. Indeed, it has referred to the statement made on behalf of the landlady in the cross-examination that she has come in possession of certain lands in the year 1965-66 for her personal cultivation. Even that aspect has been examined by the First Authority and a finding of fact recorded that the Petitioner landlady was not holding any land or was not in possession of any agricultural land on 27th January 1965 vide Judgment and Order dated October 31, 1986. That view has been affirmed by the Appellate Authority in Judgment and Order dated May 11, 1987. However, the Tribunal, for the first time, has interfered with the concurrent finding of fact recorded by the two Authorities below, on the following reasoning :

> "11. Although the finding is concurrently given by both the lower authorities I cannot agree with them. Both the lower authorities have failed to appreciate the contents of the VII-XII extracts of the

suit land as well as of the land that belongs to the landlady. The provisions of the Tenancy Act are required to be construed in such a way that they do not defeat the statutory rights of the tenant without any substantial reason. In the instant case it is abundantly clear from the extracts of the VII-XII in respect of the concerned lands to show that the landlady is in possession of 13 acres 33 gunthas of land as owner. It is much more than the holding of the tenant. She is apparently not entitled to restoration of the suit land area of which is about 1 acre 8 gunthas. It is erroneous to hold that landlady was not holding any land on the material date i.e. 27-1-1965. This observation is not based on substantial evidence. Both the lower authorities have erroneously come to the conclusion that the landlady is entitled to the restoration of the suit land. It is not open to the certificated landlady to claim the suit land when her holding is much more than the total holding of land of her tenant.

12. For the reasons discussed above I am of the opinion that the orders passed by both the learned authorities below are contrary to the provisions of law i.e. of Sub-Section (b) (5) of Section 33-B and thus they are illegal. The said provisions are mis-interpreted by the lower authorities to mean that the holding of the tenant and landlady which was available on 27-1-1965 was the basis for determining the issue. Under these circumstances, the revision application will have to be allowed and the orders of both the lower authorities will have to be set aside. I, therefore, pass the following order."

2. Having gone through the record and

considering the decisions of the Authorities below, I have no hesitation in taking the view that the decision of the Tribunal cannot be sustained. In the first place, it was not open to the Tribunal to reappreciate the evidence on record to arrive at a different finding of fact. Assuming that the Tribunal has proceeded on the assumption that the Authorities below have committed error apparent on the face of the record, even so, the conclusion reached by the Tribunal cannot be sustained. Although the Tribunal cannot be faulted with the opinion recorded that the 7/12 extract would indicate that the Petitioner landlady was in possession of 13 acres and 33 gunthas of land as owner, but what has been glossed over by the Tribunal is the necessity of ascertaining the fact as to on the date of application, what was the holding of the landlady, if any.

3. As mentioned earlier, two Authorities below, on analysing the materials on record have reached at the clear finding of fact that on 27th January 1965, the Petitioner landlady was not holding any other agricultural land. The First Authority has

also adverted to the same record in the shape of 7/12 extract and in particular, the statement made in the cross-examination on behalf of the Petitioner landlady that she came in possession of certain lands in the year 1965-66. The Authorities below have found that no positive evidence has been adduced by the Respondents/tenants to even remotely suggest that the Petitioner landlady was in actual occupation of some lands prior to 27th January 1965. The entry in the 7/12 extract would only mention the fact that Petitioner came in possession of certain lands from 1965-66, but that is not sufficient to record clear finding of fact that the possession of those lands was received by the landlady before 27th January 1965. When the revenue records refers to period 1965-66, it is obviously with reference to the agricultural year as is defined in Section 2(1) of the Maharashtra Land Revenue Code, 1966 read with Notification of the State Government dated August 24, 1967 to mean 1st of April of every year i.e. in the present case 1st April 1965 onwards. That will be of no avail because in our case, what is to be ascertained is whether the Petitioner landlady was

in possession of any other land on or before 27th January 1965. The legal position as to from which date the holding of the landlord ought to be reckoned is well settled, as can be seen from the decision of the Division Bench of our High Court reported in **1966 (LXVIII) 524 in the case of Madhav Vithoba Wani vs. Dhondudas**

Bhandas Bairagi. Accordingly, in my opinion, the decision of the Tribunal, which is impugned in this Writ Petition, cannot be sustained either on fact or in law. Hence, this Petition succeeds. The impugned Judgment and Order is set-aside and instead, the order passed by the Appellate Authority confirming the order passed by the First Authority is restored. No order as to costs.

A.M.KHANWILKAR, J.